

ROLE OF JUDICIARY IN SHAPING THE REFORMATION, REHABILITATION AND SOCIAL INTEGRATION OF INMATES

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ABSTRACT

They are required to be far away from all the influences of people because they violate the norms. Hence a rethinking on the policy and method in dealing with the problems concerned to prisoner's rehabilitation. The study is based on the outcome of the prison reform. By the virtue of birth no one is criminal. It is due to the impact of some social environment and other influential factors one person stepped in the dark path of crime. Even if one is considered as a criminal, no one wants to remain as criminal in their whole life. But without the intervention of some internal and external agencies, no one can return to mainstream of life from the clutches of crime. The very essential aspect is the timeframe of imprisonment. The sole purpose of imprisonment is to reform the offender. Thus the timeframe must be properly deployed to change the criminal's antisocial mindset and make a socially healthy mindset. Therefore, the function of the prison system has a pre-requirement of proper reformative support so that ultimate purpose of atonement of the offender is served, otherwise all efforts will go in vain irrespective of the time frame

INTRODUCTION

This chapter consists of role of the judiciary in the field of juveniles. As and when a case pertaining to or involving any juvenile came before the Court, the judicial decisions reflected the opinions of the Court about reformation, treatments and rehabilitation of a child. The role of judiciary is very remarkable. The legislature makes law but the Judiciary also places an important role in the modern setup to coin judge made law. The precedents are treated as an important source of law today. The Judicial decision not only determines a matter but also suggest those things, which the legislature could not do. The Judges fill up the blanks in law. They step into that field which could not be trodden by the legislature. This has led to make the judicial review as judicial activism. We would like to clear that wherever not mentioned, specifically, then the „Act“ means the Juvenile Justice Act, 1986 and provisions there under.

JUDICIAL PRONOUNCEMENTS

SPECIAL PROVISION IN RESPECT OF PENDING CASES

The wordings of the section 20 of the J.J. Act, 2000, are clear enough to show that if any proceeding is pending on the date of the enforcement of the new Act, that proceeding shall be concluded under the provisions of the repealed Act of 1986. However, it provided that in the case of the Court finds that the accused was juvenile and he committed the offence, the Court shall record its finding, but shall not pass any sentence and send the juvenile to the Board for appropriate orders. The sending of juvenile before the Board would arise, after the conclusion of trial and finding that the accused had committed the offence. But it is clear that except said procedure the provisions of new Act would not be applicable to the above proceedings. In **Lallan Singh V. State of U.P. and another**¹, the Allahabad High Court held that the Session Court wrongly held that the provisions of new Act are applicable to the present case. Therefore, the order under revision suffers from illegality and is without jurisdiction. Court of Session is directed to continue and deal with the case in accordance with law and to conclude the case as if the new Act has not been passed.

Juvenile Delinquency; A Welfare Problem

In **Inder Singh V. Delhi Administration**², the Supreme Court observed that you could not rehabilitate a man through brutality and disrespect. Regardless of the crime a man may commit,

he stills a human being and has feeling. If you treat a manlike an animal, then you must expect him to act like one. For every action, there is reaction. This is only human nature. And in order for an inmate to act like a human being, you must treat him as such, treating him like an animal will only get negative result from him. In **Krishna Bhagwan V. State of Bihar**, the Patna High Court held that it could not be disputed that boys below the age of 16 years and girls below 18 years of age, accused of different offences can be treated as a class being of tender age and of immature mind. In the atmosphere prevailing in the Society many of them are themselves victims of the society, not having got proper care, affection, training or having come in contact with evil elements of the society of today. The Legislature can provide for special treatment for such accused-persons with an object that they should be reformed so that later they can lead a normal life in the society. In **Supreme Court Legal Aid Committee V. Union of India**³, the Supreme Court held that there could be no two opinions that these children of today are the citizens of tomorrow's India and the country's future would necessarily depend upon their proper hygienic, physical and mental condition. The problem is therefore, gigantic; at the same time, there is demand for immediate attention and unless the importance of the matter is properly perceived and the response is adequate both in regard to sufficiency of actions and immediacy of attention the purpose of the Act cannot be fulfilled. Children require the protective umbrella of society for better growth and development, as they are not in a position to claim their entitlement of attention, growing up, food, education and the like. It is paramount obligations of those who are in charge of government of the country today to attend to the children to make them appropriate citizens of tomorrow.

Liability of State Governments

The Supreme Court pointed out more than once for passing of the Children Act, to constitute a Boards, and establishment of After Care Homes for taking of Juveniles. In **Sushil Chaudhary and Others V. State of Bihar**⁴, the Supreme Court observed that, "It is important to remember that one of the appellants was 15 years at the time of the commission of the offence. It is regrettable and this court has pointed out more than once, that there is no Children Act in Bihar and in this international year of the child we have to emphasize that the legislature is expected to do its duty for the Children of Bihar by considering the passing of a measure like the Children Act, 1960... Be that as it may, we are unable to deal with the appellant as a child for the simple reason that the absence of legislation cannot be made up by judicial legislation. All that we can do in the helpless situation of the legislation vacuum is to direct the appellant to be placed either in the open prison or in a model prison in the State where young offenders are kept". In **Sheela Barse V. Secretary**⁵, , Supreme Court observed that under the Juvenile Justice Act, the State Government is obliged to provide for establishment of after-care organisation for following up schemes of after-care programmes for the purpose of taking care of juvenile and enabling them to lead an honest, industrious and useful life. Children in observation homes should not be made to stay long and as long as they are there, they should be kept occupied and the occupation should be congenial and intended to bring about adaptability in life and aimed at bringing about a self-confidence and picking of human virtues. The Supreme Court on the above ground rejected the contention that children in children's home should be given remuneration for their employment. In **Promod Kumar Singh V. State of Bihar**⁶, it is unfortunate that 14 years have passed by and it has not been possible for the Government to constitute a Board under the act. High Court directed the Government to make prompt steps and to constitute a Board within a period of two months.

jail is not safety place for juveniles;

Now, it is not necessary to clear that child shall not be kept in Jail. Instead, we may find at various Jails children's were detained in Jail. The Judiciary in enforcing Juvenile Justice Act, as a beneficial legislation, places a significant role. In **Sheela Barse V. Union of India**⁷ in the following words Bhagwati, J.: - "If a child is national asset, it is the duty of the State to look after the child with a view to ensure full development of its personality. That is why all statutes dealing with children provide that a child shall not be kept in jail. Even apart from this statutory prescription it is

elementary that a jail is hardly a place where a child should be kept. There can be no development of the child, exposing him to baneful influences, coarsening his conscience and alienating him from the society. Really speaking, the trial of children must take place in the Juvenile Courts and not in the regular criminal Courts. There are special provisions enacted in various statutes relating to children providing for trial by Juvenile Courts in accordance with a special procedure intended to safeguard the interest and welfare of children.” In **Munna V. State of U.P.**, it was observed by the Supreme Court that since according to the Report of the Sessions Judge, 7 children were lodged in Kanpur Central Jail and perhaps a few more out of the 84 under trial prisoners could possibly be children within the meaning of the Uttar Pradesh Children Act, 1951. The Supreme Court pointed out that under the provisions of that Act, no child can, except in the rare cases, provided in the Act be detained in jail. The Supreme Court quoted section 23 of Haryana Children Act regarding the trial, which corresponds to section 18 of the Central Children Act. When a child arrested for an offence and is not released on bail, he cannot be sent to jail but he must be detained in a place of safety as defined in section 2(9) of the U.P. Children Act. It reads: - “Any observation home or any orphanage, hospital or any other suitable place or institution, the occupier or manager of which is working temporarily to receive a child, or where such observation home, orphanage, hospital or other suitable place of institution is not available in the case of a male child only, a police station in which arrangements are available or can be made for the safe keeping of a child separately from adult offenders.” How anxious is the law to protect young children from contamination with hardened criminal is also apparent from S. 27 of the Act which provides, subject only to a few limited and exceptional cases referred to in the proviso, that notwithstanding anything contained to the contrary, no court can sentence a child to death or transportation or imprisonment for any term or commit him to prison in default of payment of fine. It is therefore very surprising that the seven children mentioned in the Report of the Sessions Judge were sent by concerned Magistrate to Jail instead of being sent to Children’s Home which was place of safety in Kanpur within the meaning of Section 2, sub-section (9) of the Act. It was observed in strong words by the Supreme Court that the Magistrates in the State of Uttar Pradesh and all other magistrates in the other parts of the country where the Children Acts are in force, that they must be extremely careful to see that no person apparently under the age of 16 years is sent to jail but he must be detained in a Children’s Home or other suitable place of safety. It is absolutely essential in order to implement the provisions of the U. P. Children Act, 1951 that Children’s Home or other suitable places of safety are set up by the Government for the purpose of providing a place of detention for children’s under the age of 16 years. A nation, which is not concerned with the welfare of its children, cannot look forward to a bright future.

Role of Judiciary as a guardian, protector of the constitution

Supreme Court is the final interpreter and guardian of the constitution. It is a guardian of the Fundamental Rights of the people viz. personal liberty, equality.

In **Sheela Barse V. Union of India**⁹, the Supreme Court held that the Children Act which may be enacted by Parliament should contain not only provisions for investigation and trial of offences against children below the age of 16 years but should also contain mandatory provisions for ensuring social, economic and psychological rehabilitation of the children who are either of offenders or are abandoned or destitute or lost. It further reiterated that it is not enough merely to have legislation on the subject but it is equally, if not more, important to ensure that such legislation is implemented in all earnestness and mere lip sympathy is not paid to such legislation for non-implementation is not pleaded on ground of lack of finances on the part of the states. The greatest recompense which the state can get for expenditure on children in the building-up of a powerful human resource ready to take its place in the forward march of the nation. The Supreme Court further observed on the basis of the data received from the states that though Children Acts are on the statute book, in some states the Act has not yet been brought into force.

There is hardly any justification for not enacting it and after enacting the same not enforcing

the same. For instance, in the case of Orissa though the Act is of 1932, it has not been brought into force. Ordinarily it is a matter for the state government to decide as to when a particular statute should be brought into force, but in the present setting, observed the Supreme Court, it is appropriate that without delay every state should ensure that Act is brought into force and administered in accordance with the provisions contained therein. Such of the states where the Act exists but has been brought into force should indicate by filing an affidavit as to why the Act is not being brought into force. In this context it is also important to quote Article 39 of the Constitution as amended by the Amendment Act of 1976, which provides that the State shall direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that children and youth are protected against exploitation and against moral and material abandonment. In **Santa Kumar Sinha V. State of Bihar**¹⁰ the High Court of Patna observed that all necessary adjournments, which will cause delay in the trial of a delinquent juvenile, should be avoided and cases pending directed to be enlisted and to be disposed of within 3 months by the Courts concerned without any delay and appropriate departments should take steps for speedy disposal. Held, High Court can direct speedy disposal of cases pending under Section 27(3) of Juvenile Justice Act, 1986. In **Hussainam Khaatoon V. Home Secretary, State of Bihar**¹¹, the Supreme Court held in this case a procedure prescribed by law for depriving of his liberty cannot be reasonable fair or just unless that procedure ensures a speedy trial for determination of guilt of such person. No procedure, which does not ensure a reasonably quick trial, can be regarded as „reasonable, fair or just“, and it would fall foul of Article 21 of the Constitution. There can, therefore, be no doubt that speedy trial, which means reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution of India. In **Free Legal Aid Committee, Jamshedpur**

V. State of Bihar¹², the High Court of Patna observed that Section 23 of the Act mandates that no proceeding shall be instituted and no order shall be passed against a juvenile in a proceeding under Section 107, Cr. P.C. It is axiomatic that remand of the minor girl to jail custody in a proceeding under Section 107, Cr. P.C. is in violation of the prohibition imposed by the Act and as such it was illegal and still more unfortunate is that she had to remain in illegal detention in consequence of it for a month or so. Thus, her liberty has been infringed, and there has been violation of her fundamental right. The explanation of the acting Sub-divisional Magistrate concerned that for want of adequate light he could not mark the features and face of the girl nor could assess her age is not tenable to condone the wrong done to the girl, whose fundamental right has been infringed. The girl is entitled to compensation under the Public law in addition to the remedy available under the private law for the damages for tortious action of the Government servant. It was held by the High Court that illegal detention tantamount to infringement of fundamental rights, liable for compensation. In **Jaya Mala's case** the Supreme Court held that the detention of a minor under the preventive detention was wholly unwarranted and deserved to be quashed

CONCLUSIONS

As a seed is the source of a tree a child is father of man. So problems of Juveniles are to be dealt with very carefully, seriously, systematically. Keeping in view all aspects of the life of a child like biological, psychological, physiological, hygiene, domestic, social, cultural, economic, educational and even those political conditions in which child is grown up. The individual in society draws his values and shapes his conduct from what he sees around. In many countries corruption is common among those politicians and officials who because of their position in the community are expected to set the standards of behaviour. It would seem essential, therefore that the restoration of moral standards of conduct be made a prime objective of any society seeking to reduce its incidence of crime and delinquency to the barest minimum. There could be no two opinions that the children of today are the citizens of tomorrow's India and the country's future would necessarily depend upon their proper hygienic, physical and mental condition. Children require the protective umbrella of society for better growth and development, as they are not in a position to claim their entitlement

of attention, growing up, food, education and the like. Article 39 of the Indian Constitution provides that the State shall direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that children and youth are protected against exploitation and against moral and material abandonment. A child is national asset, as observed by the Supreme Court in *Sheela Barse v Union of India* (AIR 1986, S.C., 1773). But what we observed, is very shocking to accept, that in India over 40 per cent children (under five years) who are underweight. India has also been listed among nations that haven't ratified ILO C 182 worst forms of child labour. It also ranks 54th in 193 countries in „under five“ morality rate. We have observed that for possible reformation and readjustment of the juvenile the measures, like free and easy access to education for all children, compulsory education for all juvenile, bar on child labour, care of child's health and unpolluted atmosphere, are essential element without which conversion of a juvenile in to a normal and responsible citizen cannot be contemplated. If those children who have had little or no opportunities for growth in an atmosphere of affection, sympathy and understanding could be redeemed and resettled in life as potentially useful citizens, we think, it will be no small social gain in terms of human happiness. Sound planning must needs be based on scientific social investigation. We think that, State Government failed to fix priority to this most important work in the nations building. We have followed theoretical and also empirical approach in this research, provision for juvenile in conflict with law (Juvenile Delinquency) is a remedial measures, while provisions for children in need of care and protection is a preventive measure¹³.

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- b) Juvenile Justice (Care and Protection) Act 2000
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- d) Quoted from K.V. Iaiyanger; some aspects of Ancient Indian Polity
- e) Times of India, 22.12.2018, “Sharma is ready to return.”
- f) Constitution and Criminal Justice System; Dalbir Bharati, at p.18

¹ [2002 (2) East Cr c 133 (All)

² [(AIR, 1978, sc, 1093]

³ [Am 1989 sc 1278],

⁴ [AIR 1997 sc 3021].

⁵ [AIR 1987 SC 656]

⁶ [2000 (3) BLJR1925 (Pat.)], ,

⁷ [AIR 1986 S.C. 1773],

⁸ (AIR, 1982 S.C. 806],

⁹ [Am 1986 s.c. 1773]

¹⁰ [1989 last Cr c 584 (Pat.)],

¹¹ [AIR 1997 sc 1360],

¹² [AIR 1982 SC 1297]

¹³ Constitution and Criminal Justice System; Dalbir Bharati, at p.18.